



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 20, 2004

Mr. Loren B. Smith  
Olson & Olson, L.L.P.  
2727 Allen Parkway #600  
Houston, Texas 77019-2115

OR2004-3170

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199796.

The City of Friendswood (the "city"), which you represent, received a request for the criminal background of a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). The requested information would normally be confidential under *Reporters Committee*, and hence excepted from release under section 552.101; however, under section 552.023(a) of the Government Code a person or person's authorized representative has a special right of access to information that is protected from public disclosure by laws intended to protect that person's privacy interests. Here, the requestor is the individual's authorized representative for purposes of requesting criminal history information that would normally be confidential under the doctrine of common law privacy. Therefore, we hold that you must release the requested information to the requestor. *See Gov't Code §552.023(a)*.

In addition, you ask this office to issue a previous determination authorizing the city to withhold information found in criminal history checks that are requested by various branches of the federal government. We decline to issue such a previous determination at this time because the information at issue here is not excepted from release and cannot be withheld. *See* Open Records Decision No. 673 (2001). Therefore, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us. This ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/seg

Ref: ID# 199796

Enc. Submitted documents

c: U.S. Army Recruiting Station  
Baybrook  
19014 Gulf Freeway  
Friendswood, Texas 77546  
(w/o enclosures)